IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.790 OF 2000
IN
SUMMARY SUIT NO.2232 OF 2000

Gurdev Singh Bansal & Ors. ...Plaintiffs.

V/s

M/s. H. Kantilal & Co. ...Defendants.

Mr. V.A. Gangal with Mr. T. Almeda for the plaintiffs.

Mr. M.A. Shah i/b A.G. Shah for the defendants.

CORAM: V.M.KANADE,J.

DATE: 23rd August, 2004

PC:.

1. Plaintiffs had advanced an amount of Rs 6 lakhs. Defendants had executed a Promissory Note on six Stamp Papers of Rs 10/- each and have promised to pay Rs 12 lakhs on/or before 10/06/1997. In spite of requests and demands made by the plaintiffs, defendants failed to pay the said amount. Defendants also had given post-dated cheque for an amount of Rs 3 lakh drawn on Syndicate Bank dated 03/04/2000. However, the said cheque was also dishonoured. Advocate's notice dated 08/04/2000 was sent to the defendants' advocate. However, the said amount was not paid. The suit is, therefore, filed for recovery of an amount of Rs 20,75,000/-.

2. Defendants have filed their reply in which they have stated that the suit is time barred and that the suit is not maintainable as a Summary Suit as it is alleged that the Plaintiffs are the money lenders. It is further alleged that the Promissory Notes were not properly stamped and, therefore, the same are not admissible. Further, it is submitted that there was no agreement for interest in writing and, even otherwise, interest claimed is illegal, exorbitant and usurious. Further, it is stated that Exhibits-A and B-1 to B-6 are contrary to each other because Exhibit-A shows that Rs 1 lakh was repayable in 1995 whereas Exhibits B-1 to B-6 are silent in respect of payment of Rs 1 lakh. Plaintiffs have filed rejoinder.

3. In the present case, it is not disputed that the Promissory Notes are signed by the defendants. It cannot be said that the suit is barred by limitation as the said question will have to be decided at the final hearing, after the issues are framed. Defendants have not explained as to why cheque of Rs 3 lakhs was issued by them and was dishonoured. The allegation of the defendants that the signatures were obtained on blank papers cannot be accepted.

4. Under the circumstances, conditional leave to defendant the suit is granted to the defendants on their depositing an amount of Rs 7 lakhs in this Court within 12 weeks.

5. Summons for Judgment is disposed of in the above terms.

V.M. KANADE, J.